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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010 - 282

12 **MICHELLE LINDA VERCIO**
13 **1754 42nd Street SW**
14 **Naples, FL 34116**

ACCUSATION

15 **Registered Nurse License No. 690849**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about October 18, 2006, the Board of Registered Nursing issued Registered
24 Nurse License Number 690849 to Michelle Linda Vercio (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on October 31, 2010, unless renewed.

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1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
4 record pertaining to, the substances described in subdivision (a) of this section, in
5 which event the record of the conviction is conclusive evidence thereof.

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7 8. Section 490 of the Code provides, in pertinent part, that a board may suspend
8 or revoke a license on the ground that the licensee has been convicted of a crime
9 substantially related to the qualifications, functions, or duties of the business or profession
10 for which the license was issued.

11 9. Section 493 of the Code states:

12 Notwithstanding any other provision of law, in a proceeding conducted by a
13 board within the department pursuant to law to deny an application for a license or
14 to suspend or revoke a license or otherwise take disciplinary action against a
15 person who holds a license, upon the ground that the applicant or the licensee has
16 been convicted of a crime substantially related to the qualifications, functions, and
17 duties of the licensee in question, the record of conviction of the crime shall be
18 conclusive evidence of the fact that the conviction occurred, but only of that fact,
19 and the board may inquire into the circumstances surrounding the commission of
20 the crime in order to fix the degree of discipline or to determine if the conviction is
21 substantially related to the qualifications, functions, and duties of the licensee in
22 question.

23 As used in this section, "license" includes "certificate," "permit,"
24 "authority," and "registration."

25 REGULATORY PROVISIONS

26 10. California Code of Regulations, title 16, section 1444, states:

27 A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

1 11. California Code of Regulations, Title 16, section 1445 states in part:

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3 (b) When considering the suspension or revocation of a license on the
4 grounds that a registered nurse has been convicted of a crime, the board, in
5 evaluating the rehabilitation of such person and his/her eligibility for a license will
6 consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with any terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee.

12 (5) If applicable, evidence of expungement proceedings pursuant to Section
13 1203.4 of the Penal Code.

14 (6) Evidence, if any, of rehabilitation submitted by the licensee.

15 COSTS

16 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licensee found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 FIRST CAUSE FOR DISCIPLINE

21 (April 28, 2009 Criminal Conviction for DUI on January 14, 2009)

22 13. Respondent has subjected her license to disciplinary action under sections 490 and
23 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
24 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
25 follows.

26 14. On or about April 28, 2009, in a criminal proceeding entitled *People of the State of*
27 *California v. Michelle Linda Vercio*, in San Diego County Superior Court, case number C287460,
28 Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152,
subdivision (b), driving a vehicle while having a blood alcohol content in excess of .08 percent, a
misdemeanor. Respondent's plea included an enhancement under Vehicle Code section 23578 in
that her blood alcohol content was in excess of .15 percent.

15. As a result of the conviction, on or about April 28, 2009, Respondent was sentenced to five years summary probation, completion of a First Conviction Program, standard alcohol conditions, 5 days in a Public Service Program, 32 hours of volunteer work for a non-profit organization and payment of fees and fines.

16. The facts that led to the conviction were that on or about the early morning of January 14, 2009, a patrol officer with the San Diego County Sheriff's Department was called to a Jack in the Box in Lemon Grove, California. Respondent was observed seated in a vehicle, in an adjacent parking lot. The officer noted that upon contact with Respondent she had bloodshot and watery eyes, her speech was slurred, and she had a strong odor of an alcoholic beverage on her breath. Upon exiting her vehicle, Respondent had a difficult time maintaining her balance. After Respondent was given the Nystagmus test, she admitted she was under the influence and refused any additional tests. Respondent provided two breath tests at the Lemon Grove Sheriff's sub-station. Based on his observations, the officer arrested Respondent for driving under the influence of alcohol.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

17. Respondent has subjected her license to disciplinary action under sections 2761, subdivision (a) and 2762, subdivision (b) of the Code in that on or about January 14, 2009, as described in paragraphs 14-16, above, Respondent used alcoholic beverages to an extent or in a manner that was potentially dangerous or injurious to herself and to others in that she operated a motor vehicle while impaired by alcohol. Such unprofessional conduct posed a significant threat to public safety.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offense)

18. Respondent has subjected her license to disciplinary action under sections 2761, subdivision (a) and 2762, subdivision (c) of the Code in that on or about April 28, 2009, as described in paragraphs 14-16, above, Respondent was convicted of a criminal offense involving the consumption and/or self-administration of alcohol, which constitutes unprofessional conduct.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 690849, issued to Michelle Linda Vercio.

2. Ordering Michelle Linda Vercio to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 12/7/09


LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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